

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE WORLD TRADE CENTER
DISASTER SITE LITIGATION

MICHAEL DiVIRGILIO AND PHYLLIS DiVIRGILIO

Plaintiffs,

- against -

A RUSSO WRECKING, ET. AL.,

SEE ATTACHED RIDER,

Defendants.

21 MC 100 (AKH)

DOCKET NO.

**CHECK-OFF ("SHORT FORM")
COMPLAINT
RELATED TO THE
MASTER COMPLAINT**

**PLAINTIFF(S) DEMAND A TRIAL BY
JURY**

By Order of the Honorable Alvin K. Hellerstein, United States District Judge, dated June 22, 2006, ("the Order"), Amended Master Complaints for all Plaintiffs were filed on August 18, 2006.

NOTICE OF ADOPTION

All headings and paragraphs in the Master Complaint are applicable to and are adopted by the instant Plaintiff(s) as if fully set forth herein in addition to those paragraphs specific to the individual Plaintiff(s), which are listed below. These are marked with an "☑" if applicable to the instant Plaintiff(s), and specific case information is set forth, as needed, below.

Plaintiffs, MICHAEL DIVIRGILIO AND PHYLLIS DIVIRGILIO, by his/her/their attorneys WORBY GRONER EDELMAN & NAPOLI BERN, LLP, complaining of Defendant(s), respectfully allege:

I. PARTIES

A. PLAINTIFF(S)

1. ☑ Plaintiff, MICHAEL DIVIRGILIO (hereinafter the "Injured Plaintiff"), is an individual and a citizen of New York residing at 1746 73rd Street, Brooklyn, NY 11204-.

(OR)

2. Alternatively, ☐ _____ is the _____ of Decedent _____, and brings this claim in his (her) capacity as of the Estate of _____.

Please read this document carefully.

It is very important that you fill out each and every section of this document.

3. ☒ Plaintiff, Phyllis DiVirgilio (hereinafter the "Derivative Plaintiff"), is a citizen of New York residing at 1746 73rd Street, Brooklyn, NY 11204-, and has the following relationship to the Injured Plaintiff:

☒ SPOUSE at all relevant times herein, is and has been lawfully married to Plaintiff MICHAEL DIVIRGILIO, and brings this derivative action for her (his) loss due to the injuries sustained by her husband (his wife), Plaintiff MICHAEL DIVIRGILIO.

☐ Parent ☐ Child ☐ Other: _____

4. In the period from 9/13/2001 to 9/17/2001 the Injured Plaintiff worked for Consolidated Edison of New York, Inc. as a Splicer at:

Please be as specific as possible when filling in the following dates and locations

☒ The World Trade Center Site
Location(s) (i.e., building, quadrant, etc.) _____

From on or about 9/13/2001 until 9/17/2001;
Approximately 12 hours per day; for
Approximately 5 days total.

☐ The New York City Medical Examiner's Office
From on or about _____ until _____,
Approximately _____ hours per day; for
Approximately _____ days total.

☐ The Fresh Kills Landfill
From on or about _____ until _____;
Approximately _____ hours per day; for
Approximately _____ days total.

☐ The Barge
From on or about _____ until _____;
Approximately _____ hours per day; for
Approximately _____ days total.

☐ **Other:*** For injured plaintiffs who worked at Non-WTC Site building or location. The injured plaintiff worked at the address/location, for the dates alleged, for the hours per day, for the total days, and for the employer, as specified below:

From on or about _____ until _____;
Approximately _____ hours per day; for
Approximately _____ days total;
Name and Address of Non-WTC Site
Building/Worksite:

*Continue this information on a separate sheet of paper if necessary. If more space is needed to specify "Other" locations, please annex a separate sheet of paper with the information.

5. Injured Plaintiff

☒ Was exposed to and breathed noxious fumes on all dates, at the site(s) indicated above;

☒ Was exposed to and inhaled or ingested toxic substances and particulates on all dates at the site(s) indicated above;

☒ Was exposed to and absorbed or touched toxic or caustic substances on all dates at the site(s) indicated above;

☒ Other: Not yet determined.

Please read this document carefully.

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6. Injured Plaintiff

- ☒ Has not made a claim to the Victim Compensation Fund. Pursuant to §405(c)(3)(B)(i) of the Air Transportation Safety and System Stabilization Act, 49 U.S.C. § 40101, the issue of waiver is inapplicable.
- ☐ Made a claim to the Victim Compensation Fund that was denied. Pursuant to § 405(c)(3)(B)(i) of the Air Transportation Safety and System Stabilization Act, 49 U.S.C. § 40101, the issue of waiver is inapplicable.
- ☐ Made a claim to the Victim Compensation Fund, that was subsequently withdrawn by Ground-Zero Plaintiff. Pursuant to § 405(c)(3)(B)(i) of the Air Transportation Safety and System Stabilization Act, 49 U.S.C. § 40101, the issue of waiver is inapplicable.
- ☐ Made a claim to the Victim Compensation Fund that was granted. Pursuant to § 405(c)(3)(B)(i) of the Air Transportation Safety and System Stabilization Act, 49 U.S.C. § 40101, Ground Zero-Plaintiff has waived her/his right(s) to pursue any further legal action for the injuries identified in said claim.

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B. DEFENDANT(S)

The following is a list of all Defendant(s) named in the Master Complaint. If checked, all paragraphs pertaining to that Defendant are deemed pleaded herein.

☐ THE CITY OF NEW YORK

- ☐ A Notice of Claim was timely filed and served on _____ and
- ☐ pursuant to General Municipal Law §50-h the CITY held a hearing on _____ (OR)
- ☐ The City has yet to hold a hearing as required by General Municipal Law §50-h
- ☐ More than thirty days have passed and the City has not adjusted the claim (OR)
- ☐ An Order to Show Cause application to
- ☐ deem Plaintiff's (Plaintiffs') Notice of Claim timely filed, or in the alternative to grant Plaintiff(s) leave to file a late Notice of Claim *Nunc Pro Tunc* (for leave to file a late Notice of Claim *Nunc Pro Tunc*) has been filed and a determination
- ☐ is pending
- ☐ Granting petition was made on _____
- ☐ Denying petition was made on _____

☐ PORT AUTHORITY OF NEW YORK AND NEW JERSEY ["PORT AUTHORITY"]

- ☐ A Notice of Claim was filed and served pursuant to Chapter 179, §7 of The Unconsolidated Laws of the State of New York on
- ☐ More than sixty days have elapsed since the Notice of Claim was filed, (and)
- ☐ the PORT AUTHORITY has adjusted this claim
- ☐ the PORT AUTHORITY has not adjusted this claim.

- ☐ 1 WORLD TRADE CENTER, LLC
- ☐ 1 WTC HOLDINGS, LLC
- ☐ 2 WORLD TRADE CENTER, LLC
- ☐ 2 WTC HOLDINGS, LLC
- ☐ 4 WORLD TRADE CENTER, LLC
- ☐ 4 WTC HOLDINGS, LLC
- ☐ 5 WORLD TRADE CENTER, LLC
- ☐ 5 WTC HOLDINGS, LLC
- ☐ 7 WORLD TRADE COMPANY, L.P.

- ☒ A RUSSO WRECKING
- ☒ ABM INDUSTRIES, INC.
- ☒ ABM JANITORIAL NORTHEAST, INC.
- ☒ AMEC CONSTRUCTION MANAGEMENT, INC.
- ☒ AMEC EARTH & ENVIRONMENTAL, INC.
- ☒ ANTHONY CORTESE SPECIALIZED HAULING, LLC, INC.
- ☒ ATLANTIC HEYDT CORP
- ☒ BECHTEL ASSOCIATES PROFESSIONAL CORPORATION
- ☒ BECHTEL CONSTRUCTION, INC.
- ☒ BECHTEL CORPORATION
- ☒ BECHTEL ENVIRONMENTAL, INC.
- ☒ BERKEL & COMPANY, CONTRACTORS, INC.
- ☒ BIG APPLE WRECKING & CONSTRUCTION CORP
- ☐ BOVIS LEND LEASE, INC.
- ☒ BOVIS LEND LEASE LMB, INC.
- ☒ BREEZE CARTING CORP
- ☒ BREEZE NATIONAL, INC.
- ☒ BRER-FOUR TRANSPORTATION CORP.
- ☒ BURO HAPPOLD CONSULTING ENGINEERS, P.C.
- ☒ C.B. CONTRACTING CORP
- ☒ CANRON CONSTRUCTION CORP
- ☐ CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
- ☒ CORD CONTRACTING CO., INC
- ☐ CRAIG TEST BORING COMPANY INC.
- ☒ DAKOTA DEMO-TECH
- ☒ DIAMOND POINT EXCAVATING CORP
- ☒ DIEGO CONSTRUCTION, INC.
- ☒ DIVERSIFIED CARTING, INC.
- ☒ DMT ENTERPRISE, INC.
- ☒ D'ONOFRIO GENERAL CONTRACTORS CORP
- ☒ EAGLE LEASING & INDUSTRIAL SUPPLY
- ☒ EAGLE ONE ROOFING CONTRACTORS INC.
- ☐ EAGLE SCAFFOLDING CO, INC.
- ☒ EJ DAVIES, INC.
- ☒ EN-TECH CORP
- ☐ ET ENVIRONMENTAL
- ☐ EVANS ENVIRONMENTAL

Please read this document carefully.

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- | | |
|--|---|
| <input checked="" type="checkbox"/> EVERGREEN RECYCLING OF CORONA <input checked="" type="checkbox"/> EWELL W. FINLEY, P.C. <input checked="" type="checkbox"/> EXECUTIVE MEDICAL SERVICES, P.C. <input type="checkbox"/> F&G MECHANICAL, INC. <input checked="" type="checkbox"/> FLEET TRUCKING, INC. <input checked="" type="checkbox"/> FRANCIS A. LEE COMPANY, A CORPORATION <input checked="" type="checkbox"/> FTI TRUCKING <input checked="" type="checkbox"/> GILSANZ MURRAY STEFICEK, LLP <input checked="" type="checkbox"/> GOLDSTEIN ASSOCIATES CONSULTING ENGINEERS, PLLC <input checked="" type="checkbox"/> HALLEN WELDING SERVICE, INC. <input checked="" type="checkbox"/> H.P. ENVIRONMENTAL <input checked="" type="checkbox"/> HUDSON MERIDIAN CONSTRUCTION GROUP, LLC F/K/A MERIDIAN CONSTRUCTION CORP. <input checked="" type="checkbox"/> KOCH SKANSKA INC. <input checked="" type="checkbox"/> LAQUILA CONSTRUCTION INC <input checked="" type="checkbox"/> LASTRADA GENERAL CONTRACTING CORP <input checked="" type="checkbox"/> LESLIE E. ROBERTSON ASSOCIATES CONSULTING ENGINEER P.C. <input checked="" type="checkbox"/> LIBERTY MUTUAL GROUP <input checked="" type="checkbox"/> LOCKWOOD KESSLER & BARTLETT, INC. <input checked="" type="checkbox"/> LUCIUS PITKIN, INC <input checked="" type="checkbox"/> LZA TECH-DIV OF THORTON TOMASETTI <input checked="" type="checkbox"/> MANAFORT BROTHERS, INC. <input checked="" type="checkbox"/> MAZZOCCHI WRECKING, INC. <input checked="" type="checkbox"/> MORETRENCH AMERICAN CORP. <input checked="" type="checkbox"/> MRA ENGINEERING P.C. <input checked="" type="checkbox"/> MUESER RUTLEDGE CONSULTING ENGINEERS <input checked="" type="checkbox"/> NACIREMA INDUSTRIES INCORPORATED <input checked="" type="checkbox"/> NEW YORK CRANE & EQUIPMENT CORP. <input checked="" type="checkbox"/> NICHOLSON CONSTRUCTION COMPANY <input checked="" type="checkbox"/> PETER SCALAMANDRE & SONS, INC. <input type="checkbox"/> PHILLIPS AND JORDAN, INC. <input checked="" type="checkbox"/> PINNACLE ENVIRONMENTAL CORP <input checked="" type="checkbox"/> PLAZA CONSTRUCTION CORP. <input checked="" type="checkbox"/> PRO SAFETY SERVICES, LLC <input checked="" type="checkbox"/> PT & L CONTRACTING CORP <input type="checkbox"/> REGIONAL SCAFFOLD & HOISTING CO, INC. <input checked="" type="checkbox"/> ROBER SILMAN ASSOCIATES <input checked="" type="checkbox"/> ROBERT L GEROSA, INC <input checked="" type="checkbox"/> RODAR ENTERPRISES, INC. <input checked="" type="checkbox"/> ROYAL GM INC. <input checked="" type="checkbox"/> SAB TRUCKING INC. <input checked="" type="checkbox"/> SAFEWAY ENVIRONMENTAL CORP <input checked="" type="checkbox"/> SEASONS INDUSTRIAL CONTRACTING | <input checked="" type="checkbox"/> SEMCOR EQUIPMENT & MANUFACTURING CORP. <input checked="" type="checkbox"/> SILVERITE CONTRACTING CORPORATION <input type="checkbox"/> SILVERSTEIN PROPERTIES <input type="checkbox"/> SILVERSTEIN PROPERTIES, INC. <input type="checkbox"/> SILVERSTEIN WTC FACILITY MANAGER, LLC <input type="checkbox"/> SILVERSTEIN WTC, LLC <input type="checkbox"/> SILVERSTEIN WTC MANAGEMENT CO., LLC <input type="checkbox"/> SILVERSTEIN WTC PROPERTIES, LLC <input type="checkbox"/> SILVERSTEIN DEVELOPMENT CORP. <input type="checkbox"/> SILVERSTEIN WTC PROPERTIES LLC <input checked="" type="checkbox"/> SIMPSON GUMPERTZ & HEGER INC <input checked="" type="checkbox"/> SKIDMORE OWINGS & MERRILL LLP <input checked="" type="checkbox"/> SURVIVAIR <input type="checkbox"/> TAYLOR RECYCLING FACILITY LLC <input checked="" type="checkbox"/> TISHMAN INTERIORS CORPORATION, <input checked="" type="checkbox"/> TISHMAN SPEYER PROPERTIES, <input checked="" type="checkbox"/> TISHMAN CONSTRUCTION CORPORATION OF MANHATTAN <input checked="" type="checkbox"/> TISHMAN CONSTRUCTION CORPORATION OF NEW YORK <input checked="" type="checkbox"/> THORNTON-TOMASETTI GROUP, INC. <input checked="" type="checkbox"/> TORRETTA TRUCKING, INC <input checked="" type="checkbox"/> TOTAL SAFETY CONSULTING, L.L.C <input checked="" type="checkbox"/> TUCCI EQUIPMENT RENTAL CORP <input checked="" type="checkbox"/> TULLY CONSTRUCTION CO., INC. <input type="checkbox"/> TULLY ENVIRONMENTAL INC. <input type="checkbox"/> TULLY INDUSTRIES, INC. <input type="checkbox"/> TURNER CONSTRUCTION CO. <input checked="" type="checkbox"/> TURNER CONSTRUCTION COMPANY <input checked="" type="checkbox"/> ULTIMATE DEMOLITIONS/CS HAULING <input checked="" type="checkbox"/> VERIZON NEW YORK INC, <input checked="" type="checkbox"/> VOLLMER ASSOCIATES LLP <input type="checkbox"/> W HARRIS & SONS INC <input checked="" type="checkbox"/> WEEKS MARINE, INC. <input checked="" type="checkbox"/> WEIDLINGER ASSOCIATES, CONSULTING ENGINEERS, P.C. <input checked="" type="checkbox"/> WHITNEY CONTRACTING INC. <input checked="" type="checkbox"/> WOLKOW-BRAKER ROOFING CORP <input checked="" type="checkbox"/> WORLD TRADE CENTER PROPERTIES, LLC <input checked="" type="checkbox"/> WSP CANTOR SEINUK GROUP <input checked="" type="checkbox"/> YANNUZZI & SONS INC <input checked="" type="checkbox"/> YONKERS CONTRACTING COMPANY, INC. <input checked="" type="checkbox"/> YORK HUNTER CONSTRUCTION, LLC <input checked="" type="checkbox"/> ZIEGENFUSS DRILLING, INC. <input type="checkbox"/> OTHER: _____ |
|--|---|

Please read this document carefully.

It is very important that you fill out each and every section of this document.

☐ Non-WTC Site Building Owner

Name: _____

Business/Service Address: _____

Building/Worksite Address: _____

☐ Non-WTC Site Lessee

Name: _____

Business/Service Address: _____

Building/Worksite Address: _____

☐ Non-WTC Site Building Managing Agent

Name: _____

Business/Service Address: _____

Building/Worksite Address: _____

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II. JURISDICTION

The Court's jurisdiction over the subject matter of this action is:

☒ Founded upon Federal Question Jurisdiction; specifically; ☒ Air Transport Safety & System Stabilization Act of 2001, (or); ☐ Federal Officers Jurisdiction, (or); ☐ Other (specify): _____; ☐ Contested, but the Court has already determined that it has removal jurisdiction over this action, pursuant to 28 U.S.C. § 1441.

III CAUSES OF ACTION

Plaintiff(s) seeks damages against the above named defendants based upon the following theories of liability, and asserts each element necessary to establish such a claim under the applicable substantive law:

| | | | |
|-------------------------------------|---|-------------------------------------|--|
| <input checked="" type="checkbox"/> | Breach of the defendants' duties and obligations pursuant to the New York State Labor Law(s) including §§ 200 and 240 | <input checked="" type="checkbox"/> | Common Law Negligence, including allegations of Fraud and Misrepresentation |
| <input checked="" type="checkbox"/> | Breach of the defendants' duties and obligations pursuant to the New York State Labor Law 241(6) | | <input checked="" type="checkbox"/> Air Quality; <input checked="" type="checkbox"/> Effectiveness of Mask Provided; <input type="checkbox"/> Effectiveness of Other Safety Equipment Provided |
| <input type="checkbox"/> | Pursuant to New York General Municipal Law §205-a | | (specify: _____); <input checked="" type="checkbox"/> Other(specify): <u>Not yet determined.</u> |
| <input type="checkbox"/> | Pursuant to New York General Municipal Law §205-e | <input type="checkbox"/> | Wrongful Death |
| | | <input checked="" type="checkbox"/> | Loss of Services/Loss of Consortium for Derivative Plaintiff |
| | | <input type="checkbox"/> | Other: _____ |

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1. As a direct and proximate result of defendant's culpable actions in the rescue and/or recovery and/or construction, renovation, alteration, demolition and all work performed at the premises, the Injured Plaintiff sustained (including, but not limited to) the following injuries:

| | | | |
|-------------------------------------|---|-------------------------------------|---|
| <input type="checkbox"/> | Cancer Injury: Date of onset: _____ Date physician first connected this injury to WTC work: _____ | <input type="checkbox"/> | Cardiovascular Injury: Date of onset: _____ Date physician first connected this injury to WTC work: _____ |
| <input checked="" type="checkbox"/> | Respiratory Injury: <u>To be supplied.</u> Date of onset: <u>To be supplied at a later date</u> Date physician first connected this injury to WTC work: <u>To be supplied at a later date</u> | <input checked="" type="checkbox"/> | Fear of Cancer Date of onset: <u>To be supplied at a later date</u> Date physician first connected this injury to WTC work: <u>To be supplied at a later date</u> |
| <input type="checkbox"/> | Digestive Injury: Date of onset: _____ Date physician first connected this injury to WTC work: _____ | <input type="checkbox"/> | Other Injury: Date of onset: _____ Date physician first connected this injury to WTC work: _____ |

NOTE: The foregoing is NOT an exhaustive list of injuries that may be alleged.

2. As a direct and proximate result of the injuries identified in paragraph "1", above, the Ground Zero-Plaintiff has in the past suffered and/or will in the future suffer the following compensable damages:

=====

☒ Pain and suffering

☒ Loss of the enjoyment of life

☒ Loss of earnings and/or impairment of earning capacity

☒ Loss of retirement benefits/diminution of retirement benefits

☒ Expenses for medical care, treatment, and rehabilitation

☒ Other:

☒ Mental anguish

☒ Disability

☒ Medical monitoring

☒ Other: Not yet determined.

***Please read this document carefully.
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3. ☒ As a direct and proximate result of the injuries described *supra*, the derivative plaintiff(s), if any, have in the past suffered and/or will in the future suffer a loss of the love, society, companionship, services, affection, and support of the plaintiff and such other losses, injuries and damages for which compensation is legally appropriate.

WHEREFORE, plaintiff(s) respectfully pray that the Court enter judgment in his/her/their favor and against defendant(s) for damages, costs of suit and such other, further and different relief as may be just and appropriate.

Plaintiff(s) demands that all issues of fact in this case be tried before a properly empanelled jury.

Dated: New York, New York
November 6, 2007

Yours, etc.,

Worby, Groner Edelman & Napoli Bern, LLP
Attorneys for Plaintiff(s), Michael DiVirgilio and Phyllis
DiVirgilio



By: _____
Christopher R. LoPalo (CL 6466)
115 Broadway
12th Floor
New York, New York 10006
Phone: (212) 267-3700

ATTORNEY VERIFICATION

CHRISTOPHER R. LOPALO, an attorney at law, duly admitted to practice in the Courts of the State of New York, affirms under the penalties of perjury that:

He is the attorney for the plaintiff(s) in the above-entitled action. That he has read the foregoing SUMMONS AND VERIFIED COMPLAINT and knows the contents thereof, and upon information and belief, deponent believes the matters alleged therein to be true.

The reason this Verification is made by deponent and not by the plaintiff(s) is that the plaintiff(s) herein reside(s) in a county other than the one in which the plaintiff's attorneys maintain their office.

The source of deponent's information and the grounds of his belief are communication, papers, reports and investigation contained in the file.

DATED: New York, New York
November 6, 2007

A handwritten signature in black ink, appearing to read 'C. Lopaló', with a long horizontal line extending to the right.

CHRISTOPHER R. LOPALO

Docket No:

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MICHAEL DiVIRGILIO (AND WIFE, PHYLLIS DiVIRGILIO),

Plaintiff(s)

- against -

A RUSSO WRECKING, ET. AL.,

Defendant(s).

SUMMONS AND VERIFIED COMPLAINT

WORBY GRONER EDELMAN & NAPOLI BERN, LLP

Attorneys for: Plaintiff(s)

Office and Post Office Address, Telephone

115 Broadway - 12th Floor
New York, New York 10006
(212) 267-3700

To
Attorney(s) for

Service of a copy of the within
is hereby admitted.

Dated,

Attorney(s) for

PLEASE TAKE NOTICE:

☐ **NOTICE OF ENTRY**

that the within is a (certified) true copy of an
duly entered in the office of the clerk of the within named court on 20

☐ **NOTICE OF SETTLEMENT**

that an order _____ of which the within is a true copy
will be presented for settlement to the HON. _____ one of the
judges of the
within named Court, at
on _____, 20____ at _____ M.
Dated,

Yours, etc.,

WORBY GRONER EDELMAN & NAPOLI BERN, LLP